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The latter constitutes a new contract, complete with present consideration. See 3 WILLISTON, CONTRACTS, § 1862. The statutory requirement that a new promise be in writing should apply only to the former. *Devine v. Murphy*, 168 Mass. 249, 46 N. E. 1066. This distinction is not consistently drawn, but is suggested in several cases. See *Delabarre v. McAlpin*, 101 App. Div. 468, 471, 92 N. Y. Supp. 129, 131. If a new promise must be in writing, it should be entirely immaterial, on principle, whether it was made before the original indebtedness was barred, or after. *Wells v. Moor*, 42 Tex. Civ. App. 47, 93 S. W. 220; *Matter of Goss*, 98 App. Div. 489, 90 N. Y. Supp. 769. But a number of cases agree with the principal case in holding that the requirement does not apply to an account which was stated before the statute had run upon the prior indebtedness. *Fox v. Patachnikoff*, 75 Misc. 113, 132 N. Y. Supp. 840; *Auzerais v. Naglee*, 74 Cal. 60, 15 Pac. 371.

**MANDAMUS — ACTS SUBJECT TO MANDAMUS — INJUNCTION IMPROPERLY DENIED MAY BE OBTAINED BY MANDAMUS.** — The plaintiff's building encroached upon a public street. A judgment was obtained ordering its abatement as a public nuisance. The municipal council passed an ordinance granting title to the street to the plaintiff in exchange for other land. The plaintiff's application for a temporary injunction restraining the execution of the judgment was denied. The plaintiff then applied for a writ of mandamus ordering the lower court to issue the injunction. *Held*, that the writ of mandamus will lie. *State ex rel. Ruddock Orleans Cypress Co. v. Knop*, 86 So. 493 (La.).

Mandamus will not lie if there be any other adequate remedy, such as appeal or writ of error. *Ex parte Virginia Commissioners*, 112 U. S. 177; *People v. Crennan*, 141 N. Y. 239, 36 N. E. 187. A public officer cannot be mandamused to perform duties involving the use of discretion. *Secretary v. McGarrahian*, 9 Wall. (U. S.) 298; *People v. Commissioners*, 149 N. Y. 26, 43 N. E. 418. The Louisiana Code substantially embodies these two principles. See GARLAND'S REVISED CODE OF PRACTICE OF LOUISIANA, Art. 831, 837. It does not appear that the plaintiff's remedy by appeal would have been inadequate. Moreover, the granting or withholding of an injunction by a court is not regarded as a ministerial act. *McMillen v. Smith*, 26 Ark. 613. See HIGH, EXTRAORDINARY LEGAL REMEDIES, 3 ed., 181. The Louisiana courts, however, have ruled persistently that when a plaintiff presents a case plainly calling for injunctive relief, it is but a ministerial act to grant the injunction. *State v. Young*, 38 La. Ann. 923; *State v. Judge*, 40 La. Ann. 206, 3 So. 561; see *State v. Judge*, 36 La. Ann. 578, 580-582. These decisions ignore the fact that the determination of what is the proper law in a particular case necessitates the exercise of judgment — the criterion of a discretionary act. An injunction does not issue mechanically as an automobile license upon the fulfillment of the requirements of a specified statute. It is difficult to support the principal case.

**MARRIAGE — VALIDITY — COMMON-LAW MARRIAGE — MISTAKE AS TO EXISTENCE OF PRIOR MARRIAGE BETWEEN THE PARTIES.** — A man divorced from his former wife induced her, by a false statement that he had not procured a divorce, to resume marital relations with him. *Held*, that the woman is entitled to a widow's interest in his estate. *Wandall's Estate*, 77 Leg. Intell. 925 (Pa.).

The fundamental principle of all marriage is mutual consent. *Great Northern Railway Co. v. Johnson*, 254 Fed. 683; *Dorgeloh v. Murtha*, 92 Misc. 279, 156 N. Y. Supp. 181. See 1 HOWARD, HISTORY OF MATRIMONIAL INSTITUTIONS, 201. But if one party, apparently consenting, thereby induces the other party reasonably to enter a matrimonial relation with him, his lack of actual consent will not invalidate the marriage. *Williams v. Kilburn*, 88 Mich. 279, 50 N. W.